

AGRICULTURE
DIVISION OF FOOD AND NUTRITION

Child Nutrition Programs

Proposed Readoption with Amendments: N.J.A.C. 2:36

Authorized By: State Board of Agriculture and Charles M. Kuperus, Secretary,
Department of Agriculture.

Authority: N.J.S.A. 18A:33-4 and 5 and 18A:33-9 et seq.

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2004-112

Submit comments by June 18, 2004 to:

Kathy F. Kuser, Director

Division of Food and Nutrition

New Jersey Department of Agriculture

PO Box 334

Trenton, NJ 08625-0334

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1a, the rules in this chapter are scheduled to
expire March 1, 2004. In accordance with N.J.S.A. 52:14B-5.1c, the submission

of this notice of proposal to the Office of Administrative Law extended that expiration date 180 days to August 28, 2004. The last amendments to these rules were effective March 1, 1999. The Department of Agriculture has reviewed these rules, and with the following exceptions, has found them to be necessary, reasonable and proper for the purposes for which they were promulgated.

School breakfast, lunch and after school snack programs are administered by the Department following criteria set forth in 7 CFR §§ 210, 220, 215 and 245. The proposed amendments will clarify existing rules. In addition, these amendments will set forth the framework necessary to implement the new school breakfast program created by N.J.S.A. 18A:33-9 et seq.

The proposed amendments also clarify the application of these rules to all school districts required to make school lunch and/or breakfast available pursuant to N.J.S.A. 18A:33-4 and 5 and 18A:33-9 (P.L. 2003, c.4) regardless of participation in the National School Lunch and/or School Breakfast Programs.

Federal regulations use specific terms and definitions within the enabling program regulations. These proposed amendments contain general clarification of various definitions pertaining to the requirements of the individual program implementation.

The following amendments are proposed:

N.J.A.C. 2:36-1.1 sets forth the definitions of terms used in the proposed rules. Terminology specific to this chapter has been added for clarification.

The definition of child nutrition programs was amended to include the federally funded After School Snack Program.

The definition of Division was clarified to encompass the new Division of Food and Nutrition that includes the consolidation of the Bureau of Child Nutrition Programs and the Bureau of Food Distribution.

The definition of Policy was clarified to include the formal name within the annual application documents as Free and Reduced Priced Policy for clarification.

The definition of nutritional standards was amended to include the School Breakfast Program under 7 CFR Part 220, and the reference to After School Snack meal pattern for compliance with federal standard pertaining to foods of minimal nutritional value.

The definition of point of service was added to define that place in the school meal service line where a reimbursable meal may be claimed for Federal and State funding.

The definition of school was clarified to identify a school site operating under the sponsorship of a school district and ultimately responsible for Federal and State compliance with program regulations.

The definition of school food authority was clarified to include the governing body responsible for the administration of one or more schools, school districts or charter schools.

The definition of School nutrition programs was expanded to include the Federally funded After School Snack Program as administered by the Division of Child Nutrition.

The definition of Secretary was added to clarify that as the Secretary of the New Jersey Department of Agriculture

Within the definition of sponsor, the wording of school district was amended to school food authority to be in compliance with Federal regulations and applicable to public and nonpublic school districts.

New language was added to define the 20 percent threshold for mandatory participation in the school breakfast program as stipulated by P.L. 2003, c.4.

The definition of USDA was added to clarify that of the United States Department of Agriculture as the Federal funding source for the State administered child nutrition programs.

N.J.A.C. 2:36-1.2 explains the Policy and Agreement of the School Nutrition Programs. Clarifying language has been included to identify the Division of Food and Nutrition.

At N.J.A.C. 2:36-1.3, Eligibility, clarifying language has been included to identify income eligibility guidelines as they relate to all nonparticipating schools for the purpose of survey requirements as defined within N.J.A.C. 2:36-1.4.

At N.J.A.C. 2:36-1.4, Survey, clarifying language has been included to coordinate the data reporting date as specified under the Quality Education Act of

1990, the purpose of the survey requirement and the inclusion of the school breakfast mandate threshold.

N.J.A.C. 2:36-1.5, concerns the program application. As specified under N.J.A.C. 2:36-1.2, each school is required to survey the student population enrolled to determine which students are eligible to receive free or reduced price meals or free milk. Clarifying language has been added at N.J.A.C. 2:36-1.5(d) to define eligibility for the month of September and individual collateral contact for student eligibility information. The Department recognizes that some parents may be reluctant to provide household size and income information to determine a child's eligibility for free and reduced price meals. However, as allowed within federal program regulations, school district authorities may initiate collateral contacts on behalf of a low income student on a case by case basis in order to ensure that all eligible children have access to the program.

N.J.A.C. 2:36-1.6, Participation requirements, has been amended to address the new school breakfast program mandate as required by P.L.2003,c.4. Clarifying language has been added regarding the requirements for school districts with twenty percent or more free and/or reduced price students to offer the breakfast program to those students enrolled in schools that meet the minimum eligibility thresholds as specified for breakfast. Further requirements of P.L. 2003,c,4 are outlined as well as the five percent threshold requirement for offering the school lunch program.

At N.J.A.C. 2:36-1.7, Nutrition standards, new language has been added to include the After School Snack Program, and language clarified to identify the Division of Food and Nutrition.

At N.J.A.C. 2:36-1.8, Review and evaluation, language has been added regarding fiscal action taken against sponsors for noncompliance with correct determination of eligibility applications as established by the Federal regulations governing the school nutrition programs.

N.J.A.C. 2:36-1.9, Maximum charges is amended to establish the amount school districts must charge when establishing adult meal prices when participating in the school nutrition programs, including the market value of commodities allocated. Minimum meal pricing must take into consideration the consumer price index, include the differential between the Federal rate of reimbursement for a free and reduced price meal and the market value of commodities used for each meal served. Establishing minimum prices to cover all costs associated with the production and service of adult meals will ensure that Federal and State child nutrition funding will not be used to defray the cost of such meals. Federal regulations state that schools having pricing programs shall utilize Federal reimbursements received to reduce the price of meals and milk to children (7 CFR Parts 210, 220 and 215).

N.J.A.C. 2:36-1.10 concerns competitive food policy.

N.J.A.C. 2:36-1.11, Meal accountability has been expanded to include those meals served as after school snacks into the requirement for point of service meal counts for the purpose of federal reimbursement.

Social Impact

Readoption of these rules will continue to provide a basis for school districts to improve the nutritional value of foods offered both inside and outside the food service area and the school meal periods. The purpose is to ensure sound nutrition principles in school while reinforcing nutrition education programs and promoting healthful eating habits. The requirement to serve breakfast in targeted schools will provide balanced nutrition for the morning hours when students experience their most difficult academic classes. Significant research demonstrates that students who participate in a school based breakfast program perform better academically, concentrate better and have fewer disciplinary problems. Therefore, the readoption of these rules will have a positive social impact.

Economic Impact

Readoption of these rules will increase state and local expenditures for the provision of the school breakfast program. However, the Department of Agriculture provides school districts with State and Federal cash assistance and donated foods acquired by the United States Department of Agriculture to be used to assist schools in serving nutritious breakfasts and lunches to children each

school day and offset the costs associated with providing these meals (7 CFR Parts 210 and 220). With the implementation of the school breakfast program in mandated schools, additional Federal revenue will be generated.

The costs of administering the school breakfast programs required by this chapter vary according to the size and demographics of the district and the type of program the district chooses to offer. A district could fulfill the requirements of the subchapter with minimal administrative expense and without any additional local expenditures for meals, due to pricing and Federal and State subsidies. The costs to the State of the programs is that only of the State match required for participation in the Federal school lunch program. In 2004, the State amount was approximately \$7 million in program funds generating approximately \$126 million in Federal program funds, and \$ 2.8 million in non-match State funds for the Federal school breakfast program generating approximately \$20.2 million in Federal school breakfast subsidies. An additional \$134,000 in State administrative match dollars is required for administration of the programs at the State level. The remainder of the program funding is Federal, indicating the magnitude of the Federal subsidy from which the State benefits as a result of its participation in the Federal programs. The economic impact to New Jersey school children and their families is positive; as nutritious breakfasts and lunches are required to be available at regulated prices to all students in schools where specified levels of students qualify for free or reduced breakfast and lunches, and

offered free and at reduced prices to those students eligible. The need to survey nonparticipating districts is required by N.J.S.A. 18A:33-4 and is not new to these rules.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23 (P.L. 1995, c.65) require administrative agencies which adopt, readopt, or amend any State rules that exceed any Federal standards or requirements to include in the rulemaking a comparison between two sets of standards and an explanation of the costs and benefits associated with adopting a State standard that exceeds a Federal standard. This chapter has been developed in accordance with Federal school nutrition regulations and is primarily funded by Federal United States Department of Agriculture Child Nutrition funds as per 7 C.F.R. Parts 210, 220 and 215.

Under the Federal rules, school participation in Federal school nutrition programs is optional. The rules proposed for readoption exceed the Federal rules in that they require all schools with five percent or more of enrollment eligible for free or reduced priced meals to provide a school lunch program and/or any school with 20 percent or more of enrollment eligible for these same benefits to offer the school breakfast program and to offer free and reduced-price meals to all eligible students. This requirement implements State statute (N.J.S.A. 18A:33-4 and 18A:33-5 and P.L. 2003, c.4), however, and thus could not be limited without statutory change. The Competitive Food Policy section (N.J.A.C. 2:36-1.10) also

exceeds Federal standards in prohibiting not only the promotion but also the sale of foods of minimal nutritional value during certain periods of the day, and in extending the time period in which these activities are prohibited beyond that specified in the Federal regulations. This section further exceeds Federal standards by applying the requirements of this section to districts that are not participants in the Federal program but required by State statute to make school lunch and/or school breakfast available. These enhancements to the Federal regulations were made as a result of a finding that the Federal regulations were not sufficiently ensuring the nutritional integrity of school nutrition programs in New Jersey schools. The rules proposed for readoption also charge the State with establishing a maximum per meal and milk charge, which is not explicitly required by Federal regulations. The Federal regulations do set a maximum charge for reduced-price meals and suggest that pricing otherwise take into consideration the Federal subsidy; the rules proposed for readoption operationalize that suggestion by setting a maximum charge that includes the Federal subsidy as one of its parameters.

These rules are in compliance with the rules set forth in the Federal meal programs as set forth at 7 CFR §§ 210, 220, 215 and 245.

Jobs Impact

It is not anticipated that the rules proposed for readoption with amendments will result in the generation or loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have a positive impact on New Jersey agriculture by increasing the number of meal opportunities for schools to use locally grown fruits and vegetables.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments will impose no additional requirements beyond those currently required by Federal regulations. In addition, there will be no costs incurred for employment of professional services or any capital expenditures. The proposed amendments do not affect small businesses as defined by the Regulatory Flexibility Act N.J.S.A. 52:14B-16 et seq. The requirements of these proposed rules impact solely upon local boards of education.

Smart Growth Impact

The rules proposed for readoption with amendments are consistent with the economic strategies as outlined within the Department's Smart Growth Plan. The proposed amendments are consistent with the State's smart growth goals as they encourage the continued viability of the State's fruit and vegetable industry. Therefore, the Department anticipates that there will be a positive impact on the

achievement of smart growth and the implementation of the State's Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:36.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

2:36-1.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

...

"Child Nutrition Programs" means the National School Lunch Program, School Breakfast Program, After School Snack Program, Special Milk and Split-Session Kindergarten Milk Programs, Child Care Food Programs and the Summer Food Service Program.

...

"Division" means the Division of Food and Nutrition which is the division within the State Department of Agriculture that contains the Bureau of Child Nutrition and the Bureau of Food Distribution.

...

“Five percent threshold” means the point at which five percent or more of the total school enrollment of each school in the district is eligible for free or reduced price meals and/or free milk.

“Free and Reduced Priced Policy” means the free and reduced-price policy required by applicable regulations of the USDA, 7CFR Parts 210, 215, 220, and 245.

...

“Nutrition[al] standards” means those standards established by the U.S. Department of Agriculture at 7 CFR Part 210 and 220 incorporated by reference by the State Department of Agriculture. These standards govern the type and nutritional value of all food items offered as part of the school lunch, [and] school breakfast and after school snack meal pattern and a la carte food items.

“Point of service” means that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced-priced or paid meal and/or free or paid milk has been served to an eligible child.

[“Policy” means the free and reduced price policy required by applicable regulations of the United States Department of Agriculture, 7 C.F.R. Parts 210, 215, 220 and 245.]

"School" means a [school] site operating under the supervision of a sponsor as defined herein.

"School food authority" means the governing body which is responsible for the administration of one or more schools, school districts or charter schools; which has the legal authority to operate the National School Lunch, School Breakfast, After School Snack or Special Milk Program.

"School Nutrition Programs" means those programs administered by the Bureau of Child Nutrition, which include the National School Lunch Program, School Breakfast Program, After School Snack Program, and Special Milk Programs.

"Secretary" means the Secretary of the New Jersey Department of Agriculture

"Sponsor" means the [school district] school food authority participating in any child nutrition program.

...

"20 percent threshold" means the point at which 20 percent or more of the total school enrollment of each school is eligible for free or reduced priced meals and/or free milk.

“USDA” means the United States Department of Agriculture.

2:36-1.2 Policy and Agreement for School Nutrition Programs

(a) All school districts participating under one of the Federal child nutrition programs shall adopt a free and reduced price policy pursuant to Federal regulations 7 CFR Parts 210, 215, 220 and 245 on the form prescribed by the Secretary entitled "Policy for the Free and Reduced-Price Meals or Free Milk." This form is available from the Division of Food and Nutrition, Bureau of Child Nutrition, New Jersey Department of Agriculture, PO Box[500] 334, Trenton, NJ 08625-[0500] 0334.

(b) [This policy shall be signed and returned] Each school district shall certify and submit this policy to the [Bureau] Division no later than the end of the second calendar month for which any reimbursement can be claimed for meals and milk served under the child nutrition programs. [However, for sponsors starting programs in September, the deadline for submission of the policy shall be September 30.] Sponsors starting programs in September shall submit the policy no later than September 30 of that year.

(c) The Agreement for School Nutrition Programs shall contain the policy referred to in (a) above and shall be submitted [in accordance] with the

application packet to participate in any Child Nutrition Program prescribed by the Secretary pursuant to 7 CFR § 210.9, 215.7, 220.7 and 245.10.

2:36-1.3 Eligibility

The [Bureau] Division shall administer [Statewide,] eligibility standards pursuant to the Federal Income Eligibility Guidelines set forth at [pursuant to Federal regulations] 7 CFR Part 245 for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools. [Such]These standards shall be used by all sponsors participating in the child nutrition programs and by all nonparticipating schools for the purpose of completing the survey as required by N.J.A.C. 2:36-1.4.

2:36-1.4 Survey

(a) By the last school day prior to October 16 of each school year, each school, under the supervision of its sponsor, shall survey the parent or guardian of each student enrolled to determine which students are eligible to receive free or reduced-price meals and/or free milk. The purpose of the survey is to determine whether the school meets or exceeds the five percent threshold [as defined in] established by N.J.S.A. 18A:33-4 for school lunch programs and the 20 percent threshold established for school breakfast programs in N.J.S.A. 18:33-9.

(b) – (c) (No change.)

2:36-1.5 [Application] Free and reduced price meal and/or free milk application

(a) The [Bureau] Division shall prepare an application form that shall be used by all school districts. A copy of the application [used] completed by each school district must be filed with the [Bureau] Division together with the Free and Reduced Priced Policy described in N.J.A.C. 2:36- 1.2.

(b) (No Change.)

(c) Applications in languages other than English must be provided by the school food authority where non-English speaking parents are possible applicants. (An application in Spanish and French is available upon request from the Division of Food and Nutrition, Bureau of Child Nutrition.)

(d) Upon receipt of the completed application, the district must determine each student's eligibility for a free or reduced-price meal and/or free milk from the information submitted. Each student shall be offered free or reduced- price meals and/or free milk as soon as eligibility has been determined. Applications from the proceeding year may be used to determine eligibility only for the month of September. If the school has reason to question the information provided, the student affected must continue to receive the free or reduced-price meals and/or free milk until completion of the appeal procedures set forth in the sponsor's policy pursuant to Federal regulations (7 CFR § 245.7 Hearing Procedure for Families and School Food Authorities).

(e) [Any school may authorize free or reduced price meals and/or free milk on

the recommendation of a teacher, nurse or other school official, based on known economic need, in cases where parents will not or cannot apply for free or reduced price meals and/or free milk for their children. A school official must complete applications for these students.] Local officials may complete an application for a student believed to be eligible if the household fails to apply. The school official must complete an application on behalf of the student based on the best household size and income information available to the school official. The source of the information must be noted on the application. This option is intended for limited use in individual situations and must not be used to make eligibility determinations for categories or groups of students.

2:36-1.6 Participation requirements

- [(a) Any school in which five percent or more of the school enrollment is found to be eligible for free or reduced-price meals shall offer lunch to all students enrolled in that school. Free and reduced price lunches must be offered to all qualifying children. Such lunches shall meet minimum nutritional standards established by the U.S. Department of Agriculture (7 CFR § § 210.10 and 220)].
- (a) Any school in which five percent or more of the school enrollment is found to be eligible for free or reduced-price meals shall participate in the National School Lunch Program or, at the minimum, offer lunch to all students

enrolled in that school, with free or reduced price lunches offered to all qualifying children. Such lunches shall meet minimum nutritional standards established by the U.S. Department of Agriculture (7 CFR § 210.10). Any school may participate in the National School Lunch Program without participating in any other Federal programs.

(b) [Any school may participate in the National School Lunch Program]. Any school in which 20 percent or more of the school enrollment is found to be eligible for free or reduced price meals as of October 1 of the preceding school year, shall offer the School Breakfast Program to all students enrolled in that school, with free and reduced price breakfasts offered to all qualifying children. Such breakfasts shall meet minimum nutritional standards established by the U.S. Department of Agriculture 7 CFR § 220.8. Any school may participate in the School Breakfast Program without participating in any other Federal programs.

1. Any school meeting the 20 percent threshold that requires the implementation of the School Breakfast Program must comply with the following requirements:

- i. Each school food authority shall submit a school breakfast implementation plan to the Division by November 1 of the year prior to implementing the program in said school (s).

Each implementation plan shall be reviewed and evaluated by the Division no later than February 1 of the following year.

- ii. Any schools that have a participation rate of less than 50 percent of eligible students in a school breakfast program during any year of the program shall submit a revision of their school breakfast plan to include changes designed to increase student breakfast participation.

(c) – (d) (No change.)

2:36-1.7 Nutrition[al] Standards

Nutrition[al] standards established by the Department for meals served under the National School Lunch [Program], School Breakfast, and After School Snack Programs or as mandated by N.J.S.A. 18A:33-4 shall be identical to those established in the USDA regulations at 7 CFR § 210.10 and Part 220.8 respectively. These Federal regulations and all subsequent amendments are adopted herein by reference. These standards are [as] published in the Department's Nutrition[al] Standards for School Nutrition Programs available through the New Jersey Department of Agriculture, Division of Food and Nutrition [Bureau of Child Nutrition Programs] [Department of Agriculture], PO Box [500], 334 Trenton, New Jersey 08625-[0500] 0334.

2:36-1.8 Review and evaluation

(a) Each sponsor's implementation of [its policy] the Free and Reduced Price Policy shall be reviewed and evaluated by the [Bureau] Division on a continuing basis.

(b) Federal and State child nutrition program funds may be withheld and/or fiscal action taken against sponsors (see: 7 CFR § 210.19(c), 215.12(a) [and], 220.14(a) and 245.10) found not to be in compliance with applicable Federal regulations (7 CFR Parts 210, 215 and 220)..

(c) Sponsors shall not alter or amend standards set forth in [their policy] the Free and Reduced Price Policy without prior written approval by [Bureau] the Division.

2:36-1.9 Maximum charge

(a) The [Bureau] Division shall annually establish the maximum per meal and milk charge pursuant to 7 CFR § 210.2, 220.2 and 215.8(c); however, sponsors may appeal to the[Bureau] Division to increase such maximum per meal or milk charges.

1. The maximum milk charge shall be established based on the rate of reimbursement from the [United States Department of Agriculture (USDA)] USDA per 1/2 pint of milk, consideration of the annual average statewide student price/charge for milk and the average cost of a 1/2 pint of milk as purchased from the dairy.

2. No change

[(b)] 3. Adult meal prices shall be established to cover all costs associated with the production and service of the adult meal, including the market value of commodities allocated. The Division shall annually publish a minimum standard for the pricing of adult meals which shall be based on the consumer price index, the federal cost differential between the rate of reimbursement for the free and reduced price meal and the market value of commodities used to produce the adult meal.

2:36-1.10 Competitive food policy

1. (a) No Change
2. (b) No change

2:36-1.11 Meal accountability

Sponsors shall count and record daily, at the point of service, the number of meals/snacks or milks served by category (free, reduced price and paid).

Charles M. Kuperus, Secretary

New Jersey Department of Agriculture

February 25, 2004